

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 2458

By: Key

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7 COMMITTEE SUBSTITUTE

8
9 An Act relating to unauthorized insurers and surplus
10 lines insurance; amending 36 O.S. 2011, Sections
11 1100, 1100.1, 1100.2, 1101, 1101.1, 1103, 1104, 1105,
12 1106, 1106.1, 1107, 1109, 1111, 1112, 1113, 1114,
13 1115, 1116, 1118 and 1120, which relate to the
14 Unauthorized Insurers and Surplus Lines Insurance
15 Act; updating short title; specifying purpose;
16 modifying definitions; authorizing the Insurance
17 Commissioner in his or her discretion to enter into
18 certain agreement if deemed to be in the best
19 interest of the state; clarifying that certain
20 actions must be performed by a broker or licensee as
21 defined in the Unauthorized Insurers and Surplus
22 Lines Insurance Act; allowing insurers to write
23 surplus line insurance in this state and certain
24 other jurisdictions; specifying when all domestic
surplus lines insurers shall pay premium tax to the
Insurance Commissioner; modifying service of process;
modifying exemption from service of process; allowing
certain state agencies attorney fees; modifying
requirement for a surplus lines insurer; clarifying
that certain insurance be procured in the insurer's
home state; exempting a surplus lines broker from
making certain due diligence search; modifying
procedures related to the procurement of surplus
lines insurance with a multistate risk; clarifying
information on certain notice; specifying that
insurance agent shall have the right to receive
certain commission; modifying requirements that a
surplus lines licensee or broker must meet;
specifying that information in records of surplus
line brokers shall be determined by law; requiring

1 certain information relating to surplus lines brokers
2 to be provided to the Insurance Commissioner;
3 modifying procedures relating to the calculation and
4 payment of the premium tax; clarifying language;
5 clarifying that legal process procedures apply to
6 surplus lines or nonadmitted insurer; modifying scope
7 of subjects that shall produce certain records for
8 examination by the Insurance Commissioner; and
9 declaring an emergency.

10 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

11 SECTION 1. AMENDATORY 36 O.S. 2011, Section 1100, is
12 amended to read as follows:

13 Section 1100. A. Sections ~~4, 5, 6~~ and 12 of this act and
14 ~~Sections 1101~~ 1100 through 1120 of Title 36 of the Oklahoma Statutes
15 shall be known and may be cited as the "Unauthorized Insurers and
16 Surplus Lines Insurance Act".

17 B. The purpose and effect of the Unauthorized Insurers and
18 Surplus Lines Insurance Act shall relate back to the effective date
19 of implementation of the Nonadmitted and Reinsurance Reform Act of
20 2010.

21 SECTION 2. AMENDATORY 36 O.S. 2011, Section 1100.1, is
22 amended to read as follows:

23 Section 1100.1 As used in the Unauthorized Insurers and Surplus
24 Lines Insurance Act:

1 1. "Admitted insurer" means, with respect to a state, an
2 insurer that is licensed to transact the business of insurance in
3 such state;

4 2. "Home state" means:

5 a. except as provided in subparagraphs b through e of
6 this paragraph, with respect to an insured:

7 (1) the state in which an insured maintains its
8 principal place of business or, in the case of an
9 individual, the individual's principal residence,
10 or

11 (2) if one hundred percent (100%) of the insured risk
12 is located out of the state referred to in
13 division (1) of this subparagraph, the state to
14 which the greatest percentage of the insured's
15 taxable premium for the insurance contract is
16 allocated is deemed the home state,

17 b. with respect to determining the home state of the
18 insured, "principal place of business" means:

19 (1) the state where the insured maintains its
20 headquarters and where the insured's high-level
21 officers direct, control and coordinate the
22 business activities, or

23 (2) if the insured maintains its headquarters or the
24 insured's high-level officers direct, control and

1 coordinate the business activities outside ~~any~~
2 ~~state~~ Oklahoma, the state to which the greatest
3 percentage of the insured's taxable premium for
4 that insurance contract is allocated,

5 c. with respect to determining the home state of the
6 insured, "principal residence" means:

7 (1) the state where the insured resides for the
8 greatest number of days during the calendar year,
9 or

10 (2) if the insured's principal residence is located
11 outside any state, the state to which the
12 greatest percentage of the insured's taxable
13 premium for that insurance is allocated,

14 d. if more than one insured from an affiliated group are
15 named insureds on a single nonadmitted insurance
16 contract, the term "home state" means the home state,
17 as determined pursuant to division (1) of subparagraph
18 a of this paragraph, of the member affiliated group
19 that has the largest percentage of premium attributed
20 to it under such insurance contract, or

21 e. when the group policyholder pays one hundred percent
22 (100%) of the premium from its own funds, the term
23 "home state" means the home state, as determined
24 pursuant to division (1) of subparagraph a of this

1 paragraph, of the group policyholder. When the group
2 policyholder does not pay one hundred percent (100%)
3 of the premium from its own funds, the term "home
4 state" means the home state, as determined pursuant to
5 division (1) of subparagraph a of this paragraph, or
6 of the group member;

7 3. "Independently procured insurance" means insurance procured
8 by an insured directly from a nonadmitted insurer;

9 4. "Licensed" means, with respect to an insurer, authorization
10 to transact the business of insurance in a state by a license,
11 certificate of authority, charter or otherwise;

12 5. "Multistate risk" means a risk covered by a nonadmitted
13 insurer with insured exposures in more than one state;

14 6. "Nonadmitted insurance" means any property and casualty
15 insurance permitted in a state to be placed directly through a
16 surplus lines licensee or broker with a nonadmitted insurer eligible
17 to accept such insurance. For purposes of the Unauthorized Insurers
18 and Surplus Lines Insurance Act, nonadmitted insurance includes
19 independently procured insurance and surplus lines insurance;

20 7. "Nonadmitted insurer" means, with respect to a state, an
21 insurer not licensed to engage in the business of insurance in such
22 state, but shall not include a risk retention group as that term is
23 defined under applicable federal law;

1 8. "Single-state risk" means a risk insured with insured
2 exposures in only one state;

3 9. "Surplus lines insurer" means insurance procured by a
4 ~~surplus lines~~ nonadmitted licensee or broker from a surplus lines
5 insurer as permitted under the law of the insured's home state; and

6 10. "Surplus lines licensee" or "surplus lines broker" means an
7 individual, firm or corporation that is licensed in ~~a state~~ the
8 insured's home state to sell, solicit, or negotiate insurance,
9 including the agent of record on a nonadmitted insurance policy, on
10 properties, risks or exposures located or to be performed in a state
11 ~~with~~ allowing nonadmitted insurers to do business.

12 SECTION 3. AMENDATORY 36 O.S. 2011, Section 1100.2, is
13 amended to read as follows:

14 Section 1100.2 A. For the purposes of carrying out the
15 Nonadmitted and Reinsurance Reform Act of 2010, the Insurance
16 Commissioner is authorized in the Insurance Commissioner's sole
17 discretion and judgment to enter into the Nonadmitted Insurance
18 Multi-State Agreement or any other multistate agreement or compact
19 with the same function and purpose, in order to:

20 1. Facilitate the collection, allocation and disbursement of
21 premium taxes attributable to the placement of nonadmitted insurance
22 through a central clearinghouse;

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1 2. Provide for uniform methods of allocation and reporting
2 among nonadmitted insurance risk classifications through a central
3 clearinghouse; and

4 3. Share information among states relating to nonadmitted
5 insurance premium taxes.

6 B. The Insurance Commissioner is not compelled now or in the
7 future to join the Nonadmitted Insurance Multi-State Agreement or
8 any other multistate agreement or compact with the same function and
9 purpose of distributing surplus line premium tax proceeds based on a
10 formula of multistate risk allocation, unless the Insurance
11 Commissioner, in his or her discretion, deems joining such a
12 multistate compact or agreement is in the best interest of the State
13 of Oklahoma and its citizens.

14 SECTION 4. AMENDATORY 36 O.S. 2011, Section 1101, is
15 amended to read as follows:

16 Section 1101. A. No person in Oklahoma shall in any manner:

17 1. Represent or assist any nonadmitted insurer ~~as defined in~~
18 ~~the Unauthorized Insurers and Surplus Lines Insurance Act,~~ in the
19 soliciting, procuring, placing, or maintenance of any nonadmitted
20 insurance coverage upon or with relation to any subject of insurance
21 resident, located, or to be performed in Oklahoma without being a
22 surplus lines licensee or broker as defined in the Unauthorized
23 Insurers and Surplus Lines Insurance Act; or

1 2. Inspect or examine any risk or collect or receive any
2 premium on behalf of any nonadmitted insurer without being a surplus
3 lines broker or licensee as defined in the Unauthorized Insurers and
4 Surplus Lines Insurance Act.

5 B. Any person transacting insurance or acting as a surplus
6 lines broker or licensee in violation of this section shall be
7 liable to the insured for the performance of any contract between
8 the insured and the insurer resulting from the transaction.

9 C. This section shall not apply as to reinsurance, to surplus
10 line insurance lawfully procured pursuant to the Unauthorized
11 Insurers and Surplus Lines Insurance Act, to transactions exempt
12 under Section 606 of this title (Authorization of Insurers and
13 General Qualifications), or to professional services of an adjuster
14 or attorney-at-law from time to time with respect to claims under
15 policies lawfully solicited, issued, and delivered outside of
16 Oklahoma.

17 D. The investigation and adjustment of any claim in this state
18 arising under an insurance contract issued by ~~an unauthorized~~ a
19 nonadmitted insurer shall not be deemed to constitute the
20 transacting of the business of insurance in this state.

21 E. Nonadmitted insurers shall contract with the trustees of any
22 fund which will insure residents in this state in a manner
23 consistent with the requirements, nature and scope of the
24 Unauthorized Insurers and Surplus Lines Insurance Act.

1 SECTION 5. AMENDATORY 36 O.S. 2011, Section 1101.1, is
2 amended to read as follows:

3 Section 1101.1 A. An Oklahoma domestic insurer possessing
4 policyholder surplus of at least Fifteen Million Dollars
5 (\$15,000,000.00) may, pursuant to a resolution by its board of
6 directors, and with the written approval of the Insurance
7 Commissioner, be designated as a domestic surplus line insurer.
8 Such insurers ~~shall~~ may write surplus line insurance in this state
9 and in any other jurisdiction within which it does business,
10 including this state allowed under the Nonadmitted and Reinsurance
11 Reform Act of 2010.

12 B. ~~A~~ The premiums of a domestic surplus line insurer may only
13 ~~insure in this state any risk procured pursuant to Article 11 of the~~
14 ~~Oklahoma Insurance Code governing surplus line insurers and brokers~~
15 ~~and its premium shall be subject to surplus line premium tax~~
16 ~~pursuant to Section 1115 of this title and pursuant to the~~
17 ~~Nonadmitted Insurance Multi-State Agreement or any other multistate~~
18 ~~agreement or compact with the same function and purpose the~~
19 ~~Insurance Commissioner may, in the exercise of his or her sole~~
20 ~~discretion and judgment, enter into or join. All domestic surplus~~
21 lines insurers shall pay all premium taxes to the Insurance
22 Commissioner when Oklahoma is the home state of the insured until
23 and unless in the exercise of his or her sole discretion and
24 judgment, the Insurance Commissioner decides to join the Nonadmitted

1 Insurance Multi-State Agreement or any other multistate agreement or
2 compact with the same function and purpose.

3 C. A domestic surplus line insurer may not issue a policy
4 designed to satisfy the motor vehicle financial responsibility
5 requirement of this state, the ~~Oklahoma~~ Workers' Compensation Act
6 Code, or any other law mandating insurance coverage by a licensed
7 insurance company.

8 D. A domestic surplus line insurer is not subject to the
9 provisions of the Oklahoma Property & Casualty Insurance Guaranty
10 Act nor the Oklahoma Life and Health Insurance Guaranty Association
11 Act.

12 SECTION 6. AMENDATORY 36 O.S. 2011, Section 1103, is
13 amended to read as follows:

14 Section 1103. A. Delivery, effectuation, or solicitation of
15 any insurance contract, by mail or otherwise, within this state by a
16 surplus lines insurer, or the performance within this state of any
17 other service or transaction connected with the insurance by or on
18 behalf of the insurer, shall be deemed to constitute an appointment
19 by the insurer of the Insurance Commissioner ~~and the Commissioner's~~
20 ~~successors in office~~ as its attorney, upon whom may be served all
21 lawful process issued within this state in any action or proceeding
22 against the insurer arising out of any such contract or transaction.

23 B. Service of process shall be made by delivering to and
24 leaving with the Insurance Commissioner three copies thereof. At

1 time of service the plaintiff shall pay Twenty Dollars (\$20.00) to
2 the Insurance Commissioner, taxable as costs in the action. The
3 Insurance Commissioner shall mail by registered mail one of the
4 copies of the process to the defendant at any home state address as
5 last known to the Insurance Commissioner, and shall keep a record of
6 all process so served.

7 C. Service of process in any action or proceeding, in addition
8 to the manner provided herein, shall also be valid if served upon
9 any person within this state who, in this state on behalf of the
10 insurer, is soliciting insurance, or making, issuing, or delivering
11 any insurance policy, or collecting or receiving any premium,
12 membership fee, assessment, or other consideration for insurance.

13 D. Service of process upon an insurer in accordance with this
14 section shall be as valid and effective as if served upon a
15 defendant personally present in this state.

16 E. Means provided in this section for service of process upon
17 the insurer shall not be deemed to prevent service of process upon
18 the insurer by any other lawful means.

19 F. An insurer which has been so served with process shall have
20 the right to appear in and defend the action and employ attorneys
21 and other persons in this state to assist in its defense or
22 settlement.

23 SECTION 7. AMENDATORY 36 O.S. 2011, Section 1104, is
24 amended to read as follows:

1 Section 1104. Sections 1103 and 1105 of this article shall not
2 apply to ~~surplus line insurance lawfully effectuated under this~~
3 ~~article, or to~~ reinsurance, nor to any action or proceeding against
4 a surplus lines insurer arising out of:

5 1. Ocean marine and foreign trade insurance,

6 2. Insurance on subjects located, resident, or to be performed
7 wholly outside this state, or on vehicles or aircraft owned and
8 principally garaged outside this state,

9 3. Insurance on property or operations of railroads engaged in
10 interstate commerce, or

11 4. Insurance on aircraft or cargo of the aircraft, or against
12 liability, other than employers' liability, arising out of the
13 ownership, maintenance, or use of the aircraft, where the policy or
14 contract contains a provision designating the Insurance Commissioner
15 as its attorney for the acceptance of service of lawful process in
16 any action or proceeding instituted by or on behalf of an insured or
17 beneficiary arising out of any policy, or where the insurer enters a
18 general appearance in any action.

19 SECTION 8. AMENDATORY 36 O.S. 2011, Section 1105, is
20 amended to read as follows:

21 Section 1105. In any action against a surplus lines insurer
22 pursuant to Section 1103 of this title, if the insurer has failed
23 for thirty (30) days after demand prior to the commencement of the
24 action to make payment in accordance with the terms of the contract

1 of insurance or in accordance with Section 1115 of this title, and
2 it appears to the court that the refusal was vexatious and without
3 reasonable cause, the court may allow to the plaintiff or an
4 aggrieved agency of this state a reasonable attorney fee and include
5 the fee in any judgment that may be rendered in the action. The fee
6 shall not exceed one-third (1/3) of the amount which the court or
7 jury finds the plaintiff is entitled to recover against the insurer,
8 but in no event shall a fee be less than One Hundred Dollars
9 (\$100.00). Failure of an insurer to defend any action shall be
10 deemed prima facie evidence that its failure to make payment was
11 vexatious and without reasonable cause.

12 SECTION 9. AMENDATORY 36 O.S. 2011, Section 1106, is
13 amended to read as follows:

14 Section 1106. If insurance required to protect the interest of
15 the assured cannot be procured from admitted insurers after direct
16 inquiry to authorized insurers, insurance may be procured from
17 surplus lines insurers subject to the following conditions:

18 1. The surplus lines insurer shall meet the requirements of the
19 Unauthorized Insurers and Surplus Lines Insurance Act and the
20 following conditions:

21 a. the insurer has capital and surplus or its equivalent
22 under the laws of its domiciliary jurisdiction which
23 equals the greater of:
24

1 (1) the minimum capital and surplus requirements
2 under the laws of this state for nonadmitted
3 insurers, or

4 (2) Fifteen Million Dollars (\$15,000,000.00),

5 b. the requirements of subparagraph a of this paragraph
6 may be satisfied by an insurer's possessing less than
7 the minimum capital and surplus upon an affirmative
8 finding of acceptability by the Insurance
9 Commissioner. The finding shall be based upon such
10 factors as quality of management, capital and surplus
11 of any parent company, company underwriting profit and
12 investment income trends, market availability and
13 company record and reputation within the industry. In
14 no event shall the Insurance Commissioner make an
15 affirmative finding of acceptability when the
16 nonadmitted insurer's capital and surplus is less than
17 Four Million Five Hundred Thousand Dollars
18 (\$4,500,000.00), and

19 c. the insurer, if an alien insurer, is listed on the
20 National Association of Insurance Commissioners
21 Nonadmitted Insurers Quarterly Listing; and

22 2. The insurance shall be procured through a licensed surplus
23 lines licensee or broker licensed in a the insurer's home state. An
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1 Oklahoma surplus lines license is required only where Oklahoma is
2 the home state ~~and domicile~~ of the insurer.

3 For the purposes of carrying out the provisions of the
4 Nonadmitted and Reinsurance Reform Act of 2010, the Insurance
5 Commissioner is authorized to utilize the national insurance
6 producer database of the National Association of Insurance
7 Commissioners, or any other equivalent uniform national database,
8 for the licensure of an individual or entity as a surplus lines
9 licensee or broker and for renewal of such license.

10 SECTION 10. AMENDATORY 36 O.S. 2011, Section 1106.1, is
11 amended to read as follows:

12 Section 1106.1 A. A surplus lines licensee or broker is not
13 required to make a due diligence search to determine whether the
14 full amount or type of insurance can be obtained from admitted
15 insurers when the surplus lines licensee or broker is seeking to
16 procure or place nonadmitted insurance for an exempt commercial
17 purchaser, provided:

18 1. The licensee or broker procuring or placing the surplus
19 lines insurance has disclosed to the exempt commercial purchaser
20 that such insurance may or may not be available from the admitted
21 market that may provide greater protection with more regulatory
22 oversight; and

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1 2. The exempt commercial purchaser has subsequently requested
2 in writing for the surplus lines broker to procure or place such
3 insurance from a nonadmitted insurer.

4 B. For purposes of this section, the term "exempt commercial
5 purchaser" means any person purchasing commercial insurance that, at
6 the time of placement, meets the following requirements:

7 1. The person employs or retains a qualified risk manager to
8 negotiate insurance coverage;

9 2. The person has paid aggregate nationwide commercial property
10 and casualty insurance premiums in excess of One Hundred Thousand
11 Dollars (\$100,000.00) in the immediately preceding twelve (12)
12 months;

13 3. The person meets at least one of the following criteria:

14 a. the person possesses a net worth in excess of Twenty
15 Million Dollars (\$20,000,000.00), as such amount is
16 adjusted pursuant to paragraph 4 of this subsection,

17 b. the person generates annual revenues in excess of
18 Fifty Million Dollars (\$50,000,000.00), as such amount
19 is adjusted pursuant to paragraph 4 of this
20 subsection,

21 c. the person employs more than five hundred full-time-
22 equivalent employees per individual insured or is a
23 member of an affiliated group employing more than one
24 thousand employees in the aggregate,

1 d. the person is a not-for-profit organization or public
2 entity generating annual budgeted expenditures of at
3 least Thirty Million Dollars (\$30,000,000.00), as such
4 amount is adjusted pursuant to paragraph 4 of this
5 subsection, or

6 e. the person is a municipality with a population in
7 excess of fifty thousand (50,000) persons; and

8 4. Effective on January 1, 2015, and every five (5) years
9 thereafter, the amounts in subparagraphs a, b and d of paragraph 3
10 of this subsection shall be adjusted to reflect the percentage
11 change for such five-year period in the Consumer Price Index of All
12 Urban Consumers published by the Bureau of Labor Statistics of the
13 U.S. Department of Labor.

14 SECTION 11. AMENDATORY 36 O.S. 2011, Section 1107, is
15 amended to read as follows:

16 Section 1107. A. After procuring any surplus line insurance
17 where Oklahoma is the home state and the insurance involves a
18 multistate risk, the surplus lines licensee and broker shall submit
19 such ~~clearinghouse or other entity~~ information relating to the
20 transaction as may be established by the Insurance Commissioner
21 ~~through joining, in.~~ The data shall be provided to the Insurance
22 Commissioner until and unless in the exercise of his or her sole
23 discretion and judgment, the Insurance Commissioner decides to enter
24 or join the Nonadmitted Insurance Multi-State Agreement or any other

1 multistate agreement or compact with the same function and purpose
2 and other reporting requirements are thereby established.

3 B. When Oklahoma is the home state in connection with either a
4 single state or a multistate risk or any combination thereof, the
5 surplus lines licensee and broker shall make ~~the~~ all required
6 applications, informational and notification of doing business
7 submissions and filings, tax filings and all premium tax payments
8 required in the manner established by the Insurance Commissioner
9 ~~through joining, in.~~ The tax filings and premium tax payments shall
10 be provided entirely to the Insurance Commissioner until and unless,
11 in the exercise of his or her sole discretion and judgment, the
12 Insurance Commissioner decides to enter or join the Nonadmitted
13 Insurance Multi-State Agreement or any other multistate agreement or
14 compact with the same function and purpose and other reporting and
15 filing requirements are thereby established.

16 C. Failure to file the required information, any required fee
17 payments and make the required premium tax payments in the manner
18 established by the Insurance Commissioner ~~in the exercise of his or~~
19 ~~her sole discretion and judgment~~ pursuant to this section and
20 Section 1115 of this title where Oklahoma is the home state of the
21 insured shall result, after notice and hearing, in censure,
22 suspension, or revocation of license or a fine of up to Five Hundred
23 Dollars (\$500.00) for each occurrence or by both such fine and
24 licensure penalty.

1 SECTION 12. AMENDATORY 36 O.S. 2011, Section 1109, is
2 amended to read as follows:

3 Section 1109. A. Insurance contracts procured as surplus line
4 coverage from surplus lines insurers in accordance with this article
5 shall be fully valid and enforceable as to all parties, and shall be
6 given recognition in all matters and respects to the same effect as
7 like contracts issued by admitted insurers.

8 B. Insurance contracts procured as surplus line coverage shall
9 contain in bold-face type notification stamped by the surplus lines
10 licensee or broker or surplus lines insurer on the declaration page
11 of the policy that the contracts are not subject to the protection
12 of any guaranty association in the event of liquidation or
13 receivership of the surplus lines insurer.

14 SECTION 13. AMENDATORY 36 O.S. 2011, Section 1111, is
15 amended to read as follows:

16 Section 1111. A surplus lines licensee or broker may accept and
17 place surplus lines insurance from any insurance agent or broker
18 licensed in this state for the kind of insurance involved, and may
19 compensate such agent or broker therefor. The ~~surplus lines~~
20 ~~licensee~~ insurance agent or broker shall have the right to receive
21 from the surplus lines insurer the customary commission.

22 SECTION 14. AMENDATORY 36 O.S. 2011, Section 1112, is
23 amended to read as follows:

24

1 Section 1112. A. A surplus lines licensee or broker shall not
2 knowingly place any such coverage ~~in an~~ with a nonadmitted insurer
3 which is in an unsound financial condition. To be considered
4 financially sound, a surplus lines insurer shall meet the
5 requirements of Section 1106 of this title. ~~A surplus lines~~
6 ~~licensee or broker shall not place any such coverage in an insurer~~
7 ~~unless the insurer meets the requirements of Section 1106 of this~~
8 ~~title or has been approved in writing by the Insurance Commissioner~~
9 ~~as a surplus lines insurer and such approval has not been withdrawn.~~
10 ~~A surplus lines licensee or broker shall not place any surplus lines~~
11 ~~insurance in an insurer that does not meet the requirements of~~
12 ~~Section 1106 of this title.~~

13 B. For violation of this section, in addition to any other
14 penalty provided by law, the surplus lines broker's license shall be
15 revoked, and the broker shall not again be so licensed within a
16 period of two (2) years thereafter. In addition, any surplus lines
17 licensee and broker ~~licensed in Oklahoma~~ who violates this section
18 shall be guilty of a misdemeanor and upon conviction thereof shall
19 be punished for each offense, by a fine of not more than One
20 Thousand Dollars (\$1,000.00) or by confinement in jail for not more
21 than ninety (90) days, or by both such fine and imprisonment.

22 SECTION 15. AMENDATORY 36 O.S. 2011, Section 1113, is
23 amended to read as follows:
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1 Section 1113. Each surplus lines licensee or broker licensed in
2 Oklahoma shall keep ~~in the broker's office in this state~~ a full and
3 true record of each surplus lines contract procured by the surplus
4 lines broker, and such record may be examined at any time within
5 three (3) years thereafter by the Insurance Commissioner. The
6 record shall include such information required to be submitted as
7 established by the Insurance Commissioner ~~through joining, in the~~
8 ~~manner established by the Insurance Commissioner in his or her sole~~
9 ~~discretion and judgment, the Nonadmitted Insurance Multi-State~~
10 ~~Agreement or any other multistate agreement or compact with the same~~
11 ~~function and purpose~~ in this article.

12 SECTION 16. AMENDATORY 36 O.S. 2011, Section 1114, is
13 amended to read as follows:

14 Section 1114. Each surplus lines licensee or broker licensed or
15 transacting business in Oklahoma shall on or before April 1 of each
16 year file with the Insurance Commissioner a verified statement of
17 all surplus lines insurance transacted by the broker during the
18 preceding calendar year where Oklahoma is the home state of the
19 insured ~~or there is a single state risk in Oklahoma.~~ The statement
20 shall be on a form prescribed and furnished by the Insurance
21 Commissioner and shall show such information required to be
22 submitted as established by the Insurance Commissioner ~~through~~
23 ~~joining, in the manner established by the Insurance Commissioner.~~
24 The information shall be provided to the Insurance Commissioner

1 until and unless, in the exercise of his or her sole discretion and
2 judgment, the Insurance Commissioner decides to enter or join the
3 Nonadmitted Insurance Multi-State Agreement or any other multistate
4 agreement or compact with the same function and purpose and other
5 transaction reporting requirements are thereby established.

6 SECTION 17. AMENDATORY 36 O.S. 2011, Section 1115, is
7 amended to read as follows:

8 Section 1115. A. ~~In addition to the full amount of gross~~
9 ~~premiums charged by the insurer for the insurance, where~~ Where
10 Oklahoma is the home state of the insured, every person licensed
11 pursuant to Section 1106 of this title shall collect and pay as
12 provided in ~~subsections A through H of this section,~~ a sum for
13 premium tax based on the total gross premiums charged in connection
14 with any broker-procured surplus lines insurance, less any return
15 premiums, for surplus lines insurance ~~provided by the licensee~~
16 ~~pursuant to the license~~ sold to the Oklahoma home-state insureds by
17 the surplus lines broker and licensee.

18 B. Where Oklahoma is the home state of the insured and the
19 insurance covers properties, risks or exposures located or to be
20 performed both in and out of Oklahoma, the sum payable to the
21 Oklahoma Insurance Commissioner shall be computed based on an amount
22 equal to six percent (6%) ~~on that portion of the~~ total gross
23 premiums allocated to Oklahoma, plus an amount equal to the portion
24 of the premiums allocated to other states or territories on the

1 ~~basis of tax rates and fees applicable to whether the~~ properties,
2 risks or exposures are located or to be performed inside or outside
3 Oklahoma ~~pursuant to subsection H of this section less the amount of~~
4 ~~gross premium unearned at termination of the surplus lines~~
5 ~~insurance.~~ Any such unearned gross premium credited by the state to
6 the surplus lines broker or licensee shall be returned to the
7 policyholder by the broker or licensee. The surplus lines licensee
8 or broker is prohibited from rebating, for any reason, any part of
9 the tax.

10 C. ~~Gross~~ Where Oklahoma is the home state of the insured, gross
11 premiums charged for independently procured insurance, less any
12 return premiums, are subject to a premium tax at the rate of six
13 percent (6%), ~~and the insured procuring independently procured~~
14 ~~insurance, where Oklahoma is the home state and there is a~~
15 ~~multistate risk, shall pay the tax to the surplus lines~~
16 ~~clearinghouse, as provided in subsections A through H of this~~
17 ~~section, who shall transmit the same for distribution as provided by~~
18 ~~the Unauthorized Insurers and Surplus Lines Insurance Act payable to~~
19 the Oklahoma Insurance Commissioner, whether the properties, risks
20 or exposures are located or to be performed inside or outside
21 Oklahoma.

22 D. ~~Where the insurance covers properties, risks or exposures~~
23 ~~located or to be performed both in and out of Oklahoma, the sum~~
24 ~~payable shall be computed based on an amount equal to six percent~~

1 ~~(6%) on that portion of the gross premiums allocated to Oklahoma~~
2 ~~pursuant to subsection A of this section, plus an amount equal to~~
3 ~~the portion of the premiums allocated to other states or territories~~
4 ~~on the basis of the tax rates and fees applicable to properties,~~
5 ~~risks or exposures located or to be performed outside of this state~~
6 ~~pursuant to this subsection.~~

7 E. The Insurance Commissioner is authorized, in the exercise of
8 his or her sole discretion and judgment, to participate in the
9 Nonadmitted Insurance Multi-State Agreement or any other multistate
10 agreement or compact with the same function and purpose for the
11 purpose function of collecting and disbursing to reciprocal states
12 any funds collected pursuant to the Unauthorized Insurers and
13 Surplus Lines Insurance Act applicable to other properties, risks or
14 exposures located or to be performed outside of Oklahoma. ~~To the~~
15 ~~extent that other states where portions of the properties, risks or~~
16 ~~exposures reside have failed to enter into a compact or reciprocal~~
17 ~~allocation procedure with Oklahoma, the net premium tax collected~~
18 ~~shall be retained by Oklahoma~~ Until such time as the Insurance
19 Commissioner may, while not being required to, join such multistate
20 agreement or compact, premium taxes relating to Oklahoma home-state
21 insureds shall continue to be paid and accounted for by nonadmitted
22 insurers through their surplus lines licensees and brokers as
23 provided in subsections A through C of this section.

1 ~~F.~~ E. When the surplus lines coverage of an Oklahoma home-state
2 insured covers properties, risks or exposures located only in
3 Oklahoma, the surplus lines licensee or broker or self-procuring
4 insured shall pay the surplus lines premium tax payable on such
5 Oklahoma-only risks solely to the Oklahoma Insurance Commissioner.

6 ~~G. In order to participate in F. Should the Insurance~~
7 Commissioner exercise his or her sole discretion and judgment and
8 decide to join the Nonadmitted Insurance Multi-State Agreement or
9 any other multistate agreement or compact with the same function and
10 purpose, the Insurance Commissioner, ~~in the exercise of his or her~~
11 ~~sole discretion and judgment~~, is authorized in such event to
12 establish a uniform, statewide rate of taxation applicable to lines
13 of nonadmitted insurance ~~subject to the Agreement~~. This rate shall
14 encompass all existing rates of taxation, fees and assessments
15 imposed by this state ~~and any political subdivision hereof~~, pursuant
16 to ~~subsection~~ subsections A through C of this section and the
17 Insurance Commissioner shall document the method by which the
18 statewide rate is calculated. The Insurance Commissioner is
19 authorized to receive any monies obtained ~~through the Insurance~~
20 ~~Commissioner in the exercise of his or her sole discretion and~~
21 ~~judgment for the collection~~ as premium tax received through any
22 multistate agreement he or she may in the future in his or her
23 discretion choose to join and then ~~the disbursement of~~ disburse such

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1 funds as provided by the Insurance Code and other applicable
2 Oklahoma law.

3 ~~H.~~ G. Should the Insurance Commissioner exercise his or
4 her sole discretion and decide to join the Nonadmitted Insurance
5 Multi-State Agreement or any other multistate agreement or compact
6 with the same function and purpose, the Insurance Commissioner is
7 authorized in such circumstances to utilize or adopt any allocation
8 schedule included in the Nonadmitted Insurance Multi-State Agreement
9 or any other multistate agreement or compact the Insurance
10 Commissioner may enter in the exercise of his or her sole discretion
11 and judgment which schedule has the function and purpose of
12 allocating risk and computing the tax due on the portion of premium
13 attributable to each risk classification and to each state where
14 properties, risks or exposures are located.

15 ~~F.~~ H. Policies sold to federally recognized Indian tribes shall
16 be reported as provided in Section 1107 of this title; however,
17 these policies shall be exempt from the surplus line premium tax to
18 the extent that the Insurance Commissioner can identify that
19 coverage is for risks which are wholly owned by a tribe and located
20 within Indian Country, as defined in Section 1151 of Title 18 of the
21 United States Code.

22 ~~J.~~ I. The surplus line premium tax on insurance on motor
23 transit operations conducted between this and other states shall be
24

1 paid on the total premium charged on all surplus line insurance
2 less:

3 1. The portion of the premium ~~determined as provided in~~
4 ~~subsection C of this section~~ charged for operations in other states
5 taxing the premium of an insured where Oklahoma is the home state;
6 or

7 2. The premium for operations outside of this state of an
8 insured maintaining its headquarters office outside of this state
9 and branch office in this state.

10 SECTION 18. AMENDATORY 36 O.S. 2011, Section 1116, is
11 amended to read as follows:

12 Section 1116. A. Any surplus lines licensee or broker who
13 fails to remit the surplus line tax provided for by Section 1115 of
14 this title for more than sixty (60) days after it is due shall be
15 liable ~~to~~ for a civil penalty of not to exceed Twenty-five Dollars
16 (\$25.00) for each additional day of delinquency. The Insurance
17 Commissioner shall collect the tax by distraint and shall recover
18 the penalty by an action in the name of the State of Oklahoma. The
19 Commissioner may request the Attorney General to appear in the name
20 of the state by relation of the Commissioner.

21 B. If any person, association or legal entity procuring or
22 accepting any insurance coverage from a surplus lines insurer where
23 Oklahoma is the home state of the insured, otherwise than through a
24 surplus lines licensee or broker, fails to remit the surplus line

1 tax provided for by Section 1115 of this title, the person,
2 association or legal entity shall, in addition to the tax, be liable
3 to a civil penalty in an amount equal to one percent (1%) of the
4 premiums paid or agreed to be paid for the policy or policies of
5 insurance for each calendar month of delinquency or a civil penalty
6 in the amount of Twenty-five Dollars (\$25.00) whichever shall be the
7 greater. The Insurance Commissioner shall collect the tax by
8 distraint and shall recover the civil penalty in an action in the
9 name of the State of Oklahoma. The Commissioner may request the
10 Attorney General to appear in the name of the state by relation of
11 the Commissioner.

12 SECTION 19. AMENDATORY 36 O.S. 2011, Section 1118, is
13 amended to read as follows:

14 Section 1118. A. Every surplus lines insurer issuing or
15 delivering a surplus line policy through a surplus lines licensee or
16 broker in this state shall conclusively be deemed thereby to have
17 irrevocably appointed the Insurance Commissioner as its attorney for
18 acceptance of service of all legal process, other than a subpoena,
19 issued in this state in any action or proceeding under or arising
20 out of the policy, and service of process upon the Insurance
21 Commissioner shall be lawful personal service upon the surplus lines
22 or nonadmitted insurer.

23 B. Each surplus line policy shall contain a provision stating
24 the substance of subsection A of this section, and designating the

1 person to whom the Insurance Commissioner shall mail process as
2 provided in subsection C of this section.

3 C. Triplicate copies of legal process against such an insurer
4 shall be served upon the Insurance Commissioner, and at time of
5 service the plaintiff shall pay to the Insurance Commissioner Twenty
6 Dollars (\$20.00), taxable as costs in the action. The Insurance
7 Commissioner shall immediately mail one copy of the process so
8 served to the person designated by the insurer in the policy for the
9 purpose, by mail with return receipt requested. The surplus lines
10 or nonadmitted insurer shall have forty (40) days after the date of
11 mailing within which to plead, answer, or otherwise defend the
12 action.

13 SECTION 20. AMENDATORY 36 O.S. 2011, Section 1120, is
14 amended to read as follows:

15 Section 1120. Upon request of the Insurance Commissioner any
16 person in Oklahoma who is the insured under any policy issued by a
17 surplus lines insurer upon a subject of insurance resident, located,
18 or to be performed in Oklahoma at the time the policy was issued, or
19 where the insured's home state is Oklahoma, shall produce for
20 examination all policies and other documents evidencing and relating
21 to the insurance, and shall disclose the amount of the gross
22 premiums paid or agreed to be paid for the insurance, through whom
23 the insurance was procured, and such other information relative to
24

1 the placing of the insurance as may reasonably be required by the
2 Insurance Commissioner.

3 SECTION 21. It being immediately necessary for the preservation
4 of the public peace, health and safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

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